

technical update

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The key amendments introduced in statutes, policies and procedures in respect of Direct Tax, Indirect Tax, Corporate Laws & Accounting Standards, Foreign Exchange Management Act / Export Import Policy & Securities and Exchange Board of India related matters are summarized hereunder.

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DIRECT TAX

1. Companies subject to Insolvency and Bankruptcy Code, 2016 given tax relief on MAT computation

As per provision of Income Tax Law ('ITL'), taxation under Minimum Alternative Tax ('MAT') applicable to companies is triggered when the tax on book profit is higher than the tax on profits under normal tax provisions. While computing book profit certain adjustments are made to the profit as per Profit & Loss Account. One of the adjustments is reduction of book profit for business loss brought forward (excluding unabsorbed depreciation) or unabsorbed depreciation, whichever is lower.

CBDT has issued press release on 06.01.2018 which proposes to relax the rigors of MAT in case of companies against which an application for corporate insolvency resolution process has been admitted under the Insolvency and Bankruptcy Code, 2016. While computing profit for such companies, the amount of total loss brought forward (including unabsorbed depreciation) shall be allowed to be reduced from book profit while computing MAT.

Source: CBDT Press release, dated January 6, 2018.

2. Value recorded in books of LLP to be full value of consideration for capital gain on contribution of land by a partner to the firm

In case of transfer of a capital asset by a partner to a partnership firm by way of capital contribution, the amount recorded in the books of the partnership firm is considered to be full value of consideration of the capital asset. In case of sale of land or building, if the stamp duty value is higher than the agreement value, the stamp duty value is deemed to be sale consideration for computing capital gain.

In a recent ruling of Mumbai Tribunal, the taxpayer while computing the capital gains on transfer of land to LLP by way of capital contribution, considered the value recorded in the books of LLP as sale value. However, the Assessing Officer considered stamp duty value, which was higher than the value recorded in the books of the LLP as sale consideration and computed the capital gains.

Tribunal held that the specific provision itself deems the value recorded in books as sale value (irrespective of actual sale thereof), another deeming fiction relating to stamp duty value to be considered as sale value (in place of value recorded in books) cannot be imported while computing capital gain. Mumbai Tribunal held that that scope of one deeming fiction cannot be extended by importing another deeming fiction.

Source: Amartara Pvt Ltd vs DCIT, ITA No.6114/Mum/2016 dated December 29, 2017.

3. Processing of return of income in case of difference in income as per Form 26AS, 16A, 16 and as per tax return

Under section 143(1)(a)(vi) of the Act, with effect from April 1, 2017, an awareness campaign would be carried out which would be sent in form of e-mail and SMS communication to the concerned taxpayer informing about the variation in the tax-return vis-à-vis the information available in Form 26AS/Form 16/Form 16A along with the proposed adjustment. The response shall be submitted by the tax payer to the variation within one month of receiving the communication electronically.

Where no response is received from the taxpayer within thirty days of issue of such intimation, the proposed adjustment shall be made to the returned income.

Further, the scenario(s) for furnishing response are as under:

- If the taxpayer fully agrees, he is required to file a revised return in response.
- If the taxpayer fully disagrees, he is required to file a reconciliation statement (in the format to be provided by CPC-ITR on e-filing site).
- If the taxpayer partially agrees and partially disagrees he is required to file revised return for the part he agrees and reconciliation statement for the part he disagrees.

Source: CBDT Circular No 1/2018 [F. No. 225/333/ 2017-ITA.II, dated January 10, 2018]

4. Authority for Advance Ruling(AAR) rules that Indirect Transfer taxation ('IDT') is not triggered in India when the overseas entity derives <50% value from assets located in India

As per Finance Act ('FA') 2012, gains arising from transfer of a share or interest in a foreign company/entity that derives directly or indirectly its value substantially from assets located in India would be taxed in India. Further, in FA 2015, it was clarified that the share/interest will be deemed to derive its value substantially from assets located in India if the value of Indian asset: (a) exceeds INR 100 million and (b) the value represents at least 50% of the value of all assets owned by the foreign company/ entity.

In the case before AAR, a German company, the Applicant in this case, acquired 100% shares in another German Company ('GCo') i.e. Sellers. GCo was a family owned company having investments in many countries including a wholly owned subsidiary in India. There was an indirect change in ownership of Indian Company and therefore the Applicant sought AAR to determine its withholding tax obligations. Before the AAR, the Applicant submitted a report of valuation of Indian Company and also a calculation of the purchase price for valuation of GCo. in terms of IDT rules. The valuation indicated that Indian Company contributed in range of 5.23% to 5.57% to the value of total assets of GCo.

AAR held that value contribution of Indian Company to the value of total assets of GCo is minuscule as against the substantial value requirement of at least 50% provided in the ITL. Thus, shares in GCo do not derive substantial value from shares in Indian Company to trigger IDT tax in India and, hence, income arising on account of transfer of such shares in GCo cannot be taxed in India. Reliance can be placed on Andhra Pradesh High court ruling in the case of Sanofi Pasteur Holding SA.

Source: AAR/A.A.R. No 1232 /2012 dated November 28, 2017.

INDIRECT TAX

1. Reduction in GST rate for Composition Scheme

The GST rate for manufacturer opting to pay tax under Composition Scheme has been reduced from 1% to 0.5%. Also, in case of other suppliers, 0.5% shall be calculated on turnover of taxable supplies of goods.

Source: – Vide Notification No. 1/2018 – Central Tax dated January 01, 2018

2. Reduction in late fee for delay in filing Form GSTR-1

The late fee payable by any registered person for failure to furnish details of outward supplies in FORM GSTR-1 by the due date has been reduced to Rs. 25 per day and in case of nil return, late fee has been notified as Rs. 10 per day during which failure continues.

Source: – Vide Notification No. 4/2018 – Central Tax dated January 23, 2018

3. Extension of time limit for filing FORM GSTR-6

Time limit for furnishing return by an Input Service Distributor in FORM GSTR-6 for the months of July, 2017 to February, 2018 has been extended till March 31, 2018

Source: – Vide Notification No. 8/2018 – Central Tax dated January 23, 2018

4. Notification of GST portal for furnishing electronic way bill

Central Government has notified www.gst.gov.in as the Common Goods and Services Tax Electronic Portal for facilitating registration, payment of tax, furnishing of returns and computation and settlement of integrated tax and www.ewaybillgst.gov.in as the Common Goods and Services Tax Electronic Portal for furnishing electronic way bill.

Source: – Vide Notification No. 9/2018 – Central Tax dated January 23, 2018

5. Amendment or correction or rectification of returns

Clarification has been issued with respect to steps to be followed for rectifying errors occurred in FORM GSTR-3B depending upon the stage of filing of the said form.

Source: – Vide Circular No 26/26/2017-GST dated December 29, 2017

COMPANY LAW

1. General Circular on Condonation of Delay Scheme, 2018

Recently Ministry of Corporate Affairs has cancelled the registration of around 2.10 lakh defaulting companies and subsequent direction of the Ministry of Finance to banks to restrict operations of bank accounts of such companies by the Directors of such companies or their authorized representatives.

Aggrieved by the disqualification many disqualified Directors had made representations to the Ministry of Corporate Affairs and approached the National Company Law Tribunal and High Courts for staying order of disqualification. Taking into consideration the representations made by various stakeholders, the Central Government and Ministry of Corporate Affairs has now introduced the Condonation of Delay Scheme to provide a final opportunity for defaulting companies and Directors to regularize compliance before 31st March, 2018.

The Scheme will come into effect on January 01, 2018 and remain in force till March 31, 2018

Source: http://mca.gov.in/Ministry/pdf/Generalcircular16_29122017.pdf

2. Notification of the Companies Amendment Act, 2017

The Companies Amendment Act, 2017 has received the assent of Honorable President of India on January 3, 2018.

The amendments under the Companies (Amendment) Act, 2017, are broadly aimed at:

- Addressing difficulties in implementation owing to stringent compliance requirements.
- Facilitating ease of doing business in order to promote growth with employment.
- Harmonisation with accounting standards, the Securities and Exchange Board of India Act, 1992 and the regulations made thereunder, and the Reserve Bank of India Act, 1934 and the regulations made thereunder.
- Rectifying omissions and inconsistencies in the Act.

Source: http://mca.gov.in/Ministry/pdf/CAAct2017_05012018.pdf

3. Notification of Companies (Registration Offices and Fees) Amendment Rules, 2018

The MCA wide Notification dated January 20, 2018 has amended the Companies (Registration Offices and Fees) Amendment Rules, 2014.

With this Notification following changes will come into effect from January 26, 2018:

- Companies with authorized share capital up to ₹. 10 lakh can be incorporated in India with Zero registration Fee
- There is no re-submission for reservation of name of proposed company. It can be either rejected or approved in one go

Source: http://mca.gov.in/Ministry/pdf/Companies_Regnoofficeandfees_Amendment_Rules2018_25012018.pdf

4. Notification of Companies (Incorporation) Amendment Rules, 2018 The MCA wide Notification dated January 20, 2018 has amended the Companies (Incorporation) Rules, 2014.

With this Notification following changes will come into effect from January 26, 2018:

- a. New web service for reservation of name has been launched for name reservation called “Reserve Unique Name”. It is a one pager e-form into which one name of proposed company can be reserved without obtaining DIN and Digital Signature.
- b. MCA has reduced the time period from 60 days to 20 days for reservation of name which means that the maximum time period for incorporation of a company is 20 days.

Source: http://mca.gov.in/Ministry/pdf/Companies_Regnoofficeandfees_Amendment_Rules2018_25012018.pdf

FEMA & OTHER LAWS

1. Update on Master Direction on Foreign Investment in India

The Reserve Bank of India (RBI) has issued Master Directions on foreign exchange transactions done by a person resident outside India. It aims to consolidate instructions on all rules and regulations like prohibited sectors/persons, sectoral caps, entry routes & permitted investments by person resident outside India, mode of payment, pricing guidelines, downstream Investment, taxes and remittance of sale proceeds etc.

The master directions comprises of ten annexures containing directions on the following:

Annexure-1	Purchase/ Sale of capital instruments of an Indian company
Annexure-2	Purchase/ Sale of capital instruments of a listed Indian company on a recognised stock exchange in India by Foreign Portfolio Investors
Annexure-3	Purchase/ Sale of Capital Instruments of a listed Indian company on a recognised stock exchange in India by Non-Resident Indian (NRI) or Overseas Citizen of India (OCI) on repatriation basis
Annexure-4	Investment on non-repatriation basis
Annexure-5	Purchase and sale of securities other than capital instruments by a person resident outside India
Annexure-6	Investment in a Limited Liability Partnership (LLP)
Annexure-7	Investment by a Foreign Venture Capital Investor (FVCI)
Annexure-8	Investment by a person resident outside India in an Investment Vehicle
Annexure-9	Investment in Depository receipts by a person resident outside India
Annexure-10	Issue of Indian Depository Receipts (IDR)

Source: https://www.rbi.org.in/scripts/FS_Notification.aspx?Id=11200&fn=5&Mode=0 dated January 04, 2018

2. Refinancing of External Commercial Borrowings

Overseas branches and subsidiaries of Indian banks have been permitted by RBI to refinance External Commercial Borrowings (ECBs) of highly rated (AAA rated corporates as well as Navratna and Maharatna PSUs, by raising fresh ECBs subject to certain conditions.

Earlier, only Indian corporates were permitted to refinance their existing ECBs at a lower all-in-cost and the overseas branches/subsidiaries of Indian banks were not permitted to extend such refinance.

Source: https://www.rbi.org.in/scripts/FS_Notification.aspx?Id=11198&fn=5&Mode=0 dated January 04, 2018

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